United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

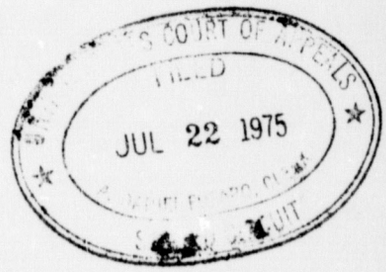
74 1504

To Be Argued By:

David J. Fine

United States Court of Appeals

For the Second Circuit



MASIA A. MUKMUK, also known as
SYLVESTER CHOLMONDELEY,

Appellant,

v.

COMMISSIONER OF THE DEPARTMENT OF CORRECTIONAL SERVICES; J. EDWIN LaVALLEE, Superintendent of the Clinton Correctional Facility; VINCENT R. MANCUSI, Superintendent of the Attica Correctional Facility; JOHN L. ZELKER, Superintendent of the Green Haven Correctional Facility,

Appellees.

BRIEF FOR APPELLANT

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Appellees.

Docket No. 74-1504

- -x

BRIEF FOR APPELLANT

Preliminary Statement

Plaintiff instituted the present action under 42 U.S.C. § 1983 to redress violation of his constitutional rights while he was a prisoner in New York's correctional institutions. His complaint, which embraces ten years of incarceration, alleges that he was subjected to a continuing course of harassment because he was a Black Muslim. It states that he was punished for his religious and political beliefs by confinement to punitive segregation for unconscionably long periods of time under degrading and dehumanizing conditions. The complaint does not claim that plaintiff was a model prisoner. It does maintain,

however, that plaintiff was victimized by a monumental disregard for his constitutional rights and basic human dignity.

Holding that the complaint failed to state a claim and that there was no issue of fact for trial, the District Court for the Southern District of New York entered an order on February 14, 1974 granting summary judgment dismissing the complaint. Plaintiff filed the present appeal in forma pauperis. Judge Bonsal's opinion is reported at 369 F.Supp. 245.

Statement of Issues

1. The complaint alleges that while a prisoner in New York's correctional institutions, plaintiff was subjected to a continuing course of harassment because he was a Black Muslim. It states that as part of this program of harassment, plaintiff was, during an eight-year period, confined to punitive segregation and keeplock* for approximately six years. In the face of such allegations, was it proper for the district court to dismiss the complaint without a trial?

2. Was it proper for the district court to dismiss without a trial a complaint which alleges:

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* Keeplock is a type of disciplinary confinement where a prisoner is locked in his cell 24 hours a day.

-- that plaintiff was confined for approximately 170 days under the very same conditions which this Court found unconstitutional in Wright v. McMann, 387 F.2d 519 (2d Cir. 1967), 460 F.2d 126 (2d Cir. 1972);

-- that plaintiff was confined to punitive segregation for one year and 15 days for taking scrap paper from the prison textile shop and for being "insolent" at the disciplinary hearing;

-- that plaintiff was confined to punitive segregation for 12 days for having writings in his cell which prison officials characterized as "anti-racial - anti-religious";

-- that without charges or hearing, plaintiff was confined to punitive segregation for nine months and 25 days because a deputy warden, on the basis of private interviews, determined that plaintiff "has preached black power and the violent overthrow of the United States Government and intends to continue doing so"; and

-- that plaintiff was locked in his cell 24 hours a day for 8 months and 22 days solely on the ground that he refused to take the Stanford Achievement Test?

3. The district court found that the complaint did not state a claim for damages against the defendants because it did not allege sufficient involvement on their part in the denial of plaintiff's constitutional rights. The complaint, however, seeks redress not for the spontaneous acts of subordinate officials unforeseeable by defendants but rather for formal disciplinary action taken against plaintiff. Given that defendants were directly responsible for such formal disciplinary action in fact and given that defendants are made constructively responsible for such action by statute, was the district court's finding correct?

STATEMENT OF THE CASE

Proceedings Below

Plaintiff, a prisoner in New York's correctional institutions from July 7, 1960 to January 2, 1975,* instituted this action under 42 U.S.C. § 1983 on August 14, 1970. Thereafter, plaintiff filed a second amended complaint ("the complaint")** which is the subject of this appeal. The complaint sought damages, and declaratory and injunctive relief including the restoration of good time.

In October 1973, defendants moved for judgment on the pleadings, or, in the alternative, for summary judgment. Defendants' motion was prompted by the Supreme Court's decision in Preiser v. Rodriguez, 411 U.S. 475 (1973). The sole stated basis for their motion was that plaintiff had failed to exhaust

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* Plaintiff was arrested on March 19, 1960 at the age of 17. On a plea of guilty, he was convicted in Queens County Court for the crimes of rape in the first degree, burglary in the third degree, and robbery in the third degree. On June 29, 1960, he was sentenced to serve 10 to 20 years on the rape conviction, 5 to 10 years on the burglary conviction, and 5 to 10 years on the robbery conviction. The sentences on the burglary and robbery convictions were to run concurrently with each other but consecutively to the sentence on the rape conviction. On June 12, 1972, the Appellate Division, Second Department directed that all three of plaintiff's sentences run concurrently. Plaintiff was imprisoned continuously from the date of his arrest until January 2, 1975 when he was conditionally released from Great Meadow Correctional Facility. Plaintiff's maximum sentence will expire on March 17, 1980.

** The complaint is reproduced in the joint appendix.

state remedies. On October 30, 1973, plaintiff cross-moved for leave to add parties, to amend the complaint,* and, in the alternative, for summary judgment.

Because defendants' motion was grounded exclusively on the claim that plaintiff had failed to exhaust, the expectation of plaintiff and plaintiff's counsel was that the maximum relief that could be granted in response to defendants' motion was a dismissal of so much of the complaint as sought the restoration of good time. By a memorandum dated January 14, 1974, Judge Bonsal did indeed dismiss plaintiff's complaint insofar as it sought the restoration of good time for failure to exhaust, and plaintiff does not appeal from that part of Judge Bonsal's decision. But Judge Bonsal went on to dismiss the rest of the complaint on grounds that had not been briefed. At the same time, he also denied plaintiff's cross-motion.

Allegations of the Complaint

A. Prolonged Periods of Punitive Segregation and Keeplock

The complaint alleges:**

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* The proposed amended complaint is reproduced in the joint appendix.

** This summary incorporates in various places what has been learned from documents produced in discovery. Consequently, this summary departs from the complaint where dates or other matters were stated inaccurately, or where elaboration appeared necessary. The essential facts relied on, however, are pleaded in the complaint.

Plaintiff was repeatedly subjected to prolonged periods of punitive segregation and keeplock. The first such period began in the fall of 1961 shortly after plaintiff became a Black Muslim. On October 2, 1961, a Muslim named Herbert Blyden was taken to the segregation unit and placed in a strip cell without any disciplinary proceeding. Fearing for Blyden's safety, plaintiff and a number of other Muslims stayed in their cells on October 3 and asked to speak to the warden. The warden interviewed them, had them transferred to the segregation unit, and then gave them the choice of remaining there or returning to the general population. Plaintiff and several others elected to remain in segregation with Blyden. On October 18, 1961, Blyden was released to the general population. On the same day, plaintiff and the others who had remained in segregation were charged with "acting in consort with other inmates in a movement against the discipline of the institution in protest of disciplinary action taken against Blyden." As a result, they lost 30 days good time,* were deprived of commissary privileges until further notice, and were sentenced to segregation indefinitely. The only explanation the report of disciplinary action (reproduced

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* Part of the good time taken from plaintiff in this and other disciplinary proceedings was later restored; part was not. See the section of this brief entitled "Deprivation and Partial Restoration of Good Time."

as exhibit 1 in the appendix to this brief) provides for the indefinite sentence of segregation is the following comment: "To seg at own request. Was given a choice returning to assignment or going to segregation. Choose segregation 10-3-61." As it turned out, plaintiff remained in segregation without any review of his status until September 1962, when he was transferred to Clinton Prison.

Plaintiff's second prolonged period of segregation came about in a similar way. When he arrived at Clinton Prison on September 13, 1962, plaintiff was placed in the general population and given a job in the cotton shop. During his free time he and some other Muslims gathered on a small area of the recreation yard called a "court" and peacefully discussed and practiced their religion. Because they were not allowed to obtain Muslim literature from outside sources, they studied from handwritten lessons passed from one inmate to another, and were taught by fellow inmates.

By order of the Commissioner, defendant McGinnis, however, the Black Muslim religion was not recognized and everything was done to discourage its participants and to quash it: the Muslims were not allowed to gather for religious meetings; they were not allowed to communicate with the Honorable Elijah Muhammad or to receive books or newspapers relating to their religion, or to obtain the services

of any of his ministers. In addition, orders from Albany stated that no inmate was permitted to have any materials pertaining to the Black Muslim movement; such materials were automatically contraband and subject to confiscation.

On October 24, 1962, several guards approached the "court" where the Muslims were gathered and asked Ned Hines, the inmate speaking to the others, to hand over the material he was reading. He and Samuel Williams, who was in charge of the court, were then escorted to their cells and moved to E Block Segregation.

The next day, October 25, about 14 of the Muslim inmates who had been gathered on the court at the time of the above incident approached the sergeant's booth in the yard and asked to speak to him about the keeplocking of Hines and Williams and the taking of their rules and regulations, and to say that if Hines and Williams had broken any institutional rules so had they and they should share in the punishment. The plaintiff and the other inmates were completely orderly, lining up to speak to the sergeant one at a time as he requested; no incident of resisting being taken to their cells was reported in the Interdepartmental Communications. Nevertheless, the inmates were charged with "creating a serious disturbance in the North Yard . . . and . . . taking part in a mass protest against the administration," for which they were

placed in segregation and deprived of 90 days good time. (See entries for October 25, 1962 in service unit record reproduced as exhibit 2 in the appendix to this brief.) Plaintiff lost 30 days good time for allegedly resisting an officer and refusing to obey direct orders, an incident which he says never occurred, and he was penalized another 30 days for having contraband literature in his cell, i.e., writings concerning the Muslim religion.

As a result of this incident, plaintiff and the other Muslims were placed in E Block, an extension of the segregation unit. Throughout the remainder of his stay at Clinton, that is, until February 20, 1965, plaintiff was confined either in the E Block section of segregation, the regular segregation unit, or Section 4, the severest part of segregation. This unrelieved confinement to one form or another of punitive segregation was in keeping with Commissioner McGinnes's policy of isolating Muslims from the general population. It was plaintiff's experience that only when an inmate agreed not to be a Muslim any more was he allowed to return to the general population.

On February 20, 1965, plaintiff was transferred to Attica Prison and placed in the general population. He was not to be in the general population long, however, before a third prolonged commitment to segregation. On

March 16, 1965, while working in the textile shop, plaintiff had written some thoughts on a piece of scrap brown paper intending to take it to his cell. When stopped by a sergeant and questioned about it, plaintiff protested. He was charged with insolence and taking paper from the shop. When he appeared at the disciplinary hearing, plaintiff was found guilty although he had not been familiar with the rule prohibiting the taking of paper from the shop and despite the fact that inmates generally took small liberties without being punished. Plaintiff was placed in segregation and deprived of 30 days good time. (See cumulative record of disciplinary action.)* Without any further disciplinary reports, plaintiff was kept in segregation until March 31, 1966, at which time he was transferred to Green Haven Prison.

Plaintiff remained in the general population at Green Haven without significant incident until January 31, 1967. On that day, however, he was placed in segregation as punishment for an offense described in the report of disciplinary action (reproduced as exhibit 4 in the appendix to this brief) as follows:

> "[Possession of] anti-racial - anti-religious papers also advocating overthrow of U.S. Government. Also running school for Muslims."

Plaintiff remained in segregation until he was transferred back to Clinton Prison on February 11, 1967.

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* The cumulative record of disciplinary action is reproduced in the joint appendix.

Upon his arrival at Clinton, plaintiff was interviewed by the Deputy Warden, Perry J. DeLong. Simply on the basis of this interview, and without any charges or hearing, DeLong ordered plaintiff confined to the segregation unit.

In explaining the basis for his action in an affidavit dated May 17, 1967 (reproduced as exhibit 5 in the appendix to this brief), DeLong stated:

> "[At the interview on February 11, 1967, plaintiff] was very resentful, antagonistic and flatly refused to cooperate with the Administration and observe the rules and regulations of the institution . . . . Subsequent interviews have revealed no change in his attitude. Inasmuch as he has preached black power and the violent overthrow of the United States Government and intends to continue doing so, it is necessary to continue him in an area where a general prison disturbance can be avoided."

Plaintiff remained in segregation until December 6, 1967.

On February 1, 1968, plaintiff was transferred from Clinton to Auburn Prison. On April 30, 1969, plaintiff sent a letter to defendant McMann, warden of Auburn, requesting that a black studies program be established in the prison school. The next day, May 1, 1969, McMann sent a letter to defendant McGinnis, Commissioner of Correction, confirming his telephone request that plaintiff be transferred to Attica. McMann enclosed with this letter to McGinnis a copy of

plaintiff's April 30 letter and a copy of a letter McMann was sending to defendant Mancusi, warden of Attica. Plaintiff has not obtained a copy of McMann's letter to Mancusi but it may be inferred that the letter referred to the transfer McMann was requesting and also referred to, and perhaps enclosed, plaintiff's letter of April 30.

On May 2, 1969, plaintiff was indeed transferred to Attica. Prior to his transfer, plaintiff had been enrolled in the school program and doing work on the high school level. On arriving at Attica, however, plaintiff was ordered to take the Stanford Achievement Test. Plaintiff declined to take the test, maintaining that he had been transferred for advocating the establishment of a black studies program at Auburn and explaining that he did not wish to participate in the school program until he had taken the issue of his transfer to the courts. (See the report of disciplinary action reproduced as exhibit 6 in the appendix to this brief.)

Despite the fact that there was no written regulation requiring plaintiff to take the Stanford Achievement Test, and despite the fact that the records from Auburn clearly indicated that plaintiff was above the level for mandatory education, he was severely disciplined in an effort to coerce him into agreeing to take the tests. Plaintiff was keeplocked, that is, locked in his cell 24 hours a day, for 30 days at a time,

without radio or commissary privileges. Plaintiff was kept in one cell, leaving it only for a weekly shower and a monthly disciplinary hearing, from May 6, 1969 until January 28, 1970, more than 260 days.

B. Debasing and Dehumanizing Conditions of Confinement

In addition to claiming that plaintiff was unconstitutionally confined to prolonged periods of punitive segregation and keeplock, the complaint also maintains the following:

Especially during the earlier years of his confinement, plaintiff was repeatedly subjected to conditions so barbarous that no infraction of prison rules could constitutionally have warranted their imposition, let alone the often petty infractions of which plaintiff was accused. The periods of plaintiff's incarceration under such conditions can be summarized as follows:

Institution	Dates of Confinement	Name of Confinement	Salient Characteristics of Confinement
Auburn	10/3/61-11/2/61	Strip Cell	No exercise; no books, writing materials, or other personal effects; reduced diet; no cleaning materials but rags.
Auburn	5/24/62-5/26/62	Prison Cell or Dark Hole	No light; no sink or toilet; stench from filth and decaying excrement and urine not cleaned from cell after last occupant left.

Institution	Dates of Confinement	Name of Confinement	Salient Characteristics of Confinement
Clinton	10/25/62-4/12/63	E Block Segregation	Coldest part of building, windows regularly left open, mandatory exercise period in yard regardless of weather (which went as low as -4 degrees) and without adequate winter clothing.
Clinton	3/22/64-4/27/64 4/27/64-5/27/64 9/15/64-10/15/64 11/30/64-2/20/65	Section 4 Segregation Cell	No exercise; toilet paper, soap, etc. kept outside cell beyond inmate's reach -- available only when guard chose to supply them; no books, writing materials, or other personal effects; inmate required to stand at attention; reduced diet; windows frequently left open.
Attica	3/16/65-4/5/65	Strip Cell	No toilet or sink, only bucket for first 10 days, given less than half rations and not given any soap, toothbrush or toothpaste.
Clinton	2/11/67-3/13/67	Section 4 Segregation Cell	Although somewhat improved, conditions essentially as described above for § 4 confinement at Clinton in 1964 and 1965.

C. Other Disciplinary Action

In addition to the disciplinary action already discussed, the complaint claims that plaintiff was subjected to continual harassment in the form of numerous petty and exaggerated charges. The following are just some of the incidents described in the complaint and are meant to serve only as examples of a larger pattern.

Plaintiff was disciplined for wearing a homemade hat with a Muslim emblem on it when he came out of his cell on the morning of March 21, 1962 to get some water, and for refusing to hand it to an officer who asked for it. In punishment for this incident, plaintiff was keeplocked five days and deprived of 20 days good time.

On May 26, 1962, plaintiff was found guilty of having thrown a plate of chop suey into the toilet on May 19. The chop suey contained pork and was consequently inedible for Muslims. For this offense, plaintiff was keeplocked 10 days and penalized 30 days good time. In addition, he was placed in a "prison cell," also known as a "dark hole" for three days, from May 24 to May 26, under the conditions summarized in the previous section of this brief.

While in E Block segregation at Clinton Prison, plaintiff and certain other Muslim inmates instituted a lawsuit complaining that they were not allowed to practice their religion and that they were being subjected to harassment and confinement to segregation because they were Muslims. Shortly after answering papers were filed, plaintiff was transferred to the regular segregation unit. Upon his transfer, plaintiff's personal property was searched and plaintiff's court papers in connection with the pending lawsuit were confiscated along with some other writings. On May 1, 1963, plaintiff wrote a note to

the warden (reproduced as exhibit 3 in the appendix to this brief) which read as follows:

> "Dear Sir:
>
> Please find this request is to obtain important information pertaining to my personal property, of which it has been confiscated by one of your officials, on April 18, 1963.
>
> However, the only things I have received was most of my letters and some science notes, on April 22, 1963.
>
> Now! I want to know what is your motive for conficating [sic] my personal property, without returning my legal documents, (Kigomba, Swahili, Spanish, English, are all lessons), and the letter? I would like to have my personal property back as soon as pcssible.
>
> Thank you.
> I remain,
>
> P.S. When will I be able to received [sic] packages from home?"

As a result, plaintiff was found guilty of "[w]riting an insolent note to Warden demanding to know what his [Warden's] motive for confiscating personal property" and penalized 30 days good time.

On July 23, 1964, plaintiff was found guilty of having destroyed a state issued toothbrush and disciplined with loss of yard privileges for 30 days.

On October 11, 1964, plaintiff was penalized with loss of commissary privileges for 60 days because having started a letter on regularly issued prison stationery and having made

several mistakes, plaintiff tore up the piece of paper and flushed it down the toilet. The disciplinary action report described this offense as "disobeying rules and destroying letter heads."

On November 30, 1964, plaintiff was found guilty of insolence in handing over his eating utensils. For this offense, he was placed in Section 4 for 30 days under the conditions described in the previous section of this brief. As it turned out plaintiff was confined in Section 4 until February 20, 1965, when he was transferred to Attica Prison.

On March 27, 1971, plaintiff's cell was searched and he was charged with having inflammatory literature. This material consisted of a twelve point platform of the black demands in prison, and the definitions, goals, and methods of operation of several black organizations. Plaintiff was keeplocked pending a disposition of the charge and on or about April 4, a hearing was held and plaintiff was sentenced to time served.

Throughout his incarceration in New York's correctional institutions, plaintiff was repeatedly disciplined for nothing more specific than "insolence." (See cumulative record of disciplinary action reproduced in the joint appendix.)

Deprivation and Partial Restoration of Good Time

Under N.Y. Penal Law § 70.40(1)(b), a prisoner serving an indeterminate sentence may be conditionally released from confinement "when the total good behavior time allowed to him . . . is equal to the unserved portion of his maximum . . . term." And a prisoner serving an indeterminate sentence is eligible to receive good time credit for up to one-third of his maximum sentence. N.Y. Correction Law § 803(1); N.Y. Penal Law § 70.30(4)(a). Since plaintiff's maximum sentence, as amended on June 12, 1972, was 20 years, he was eligible for good time of six years and eight months. Accordingly, plaintiff could have been conditionally released as early as July 17, 1973.

As a result of the numerous disciplinary proceedings brought against him, however, plaintiff had, by July 1973, been deprived of three years, two months, and fifteen days of good time. Moreover, plaintiff had been deprived of an additional 718 days of good time by virtue of disciplinary confinement, during which he was not eligible to earn good time under the rules then in effect.

When this deprivation of good time was reviewed in 1973 in accordance with the Department of Correctional Services regulations promulgated in 1970 (7 N.Y.C.R.R.

§§ 260.1 - 270.4), the amount of the deprivation was reduced. The course of the review proceedings and the determinations made are significant. When the Time Allowance Committee at the Adirondock Correctional Treatment and Evaluation Center considered plaintiff's case on May 17, 1973, it recommended that none of the time declared lost in disciplinary proceedings be restored. Of the remaining good time with which plaintiff could be credited, that is, three years, five months, and fifteen days, the Committee recommended that plaintiff be granted two years, five months, and eighteen days. This consisted of the return of all 718 days lost through disciplinary confinement plus 180 days representing time earned for improved behavior over the prior 18 months.*

The Superintendent of the facility confirmed this recommendation and forwarded it to the Commissioner of Correction. Substantially modifying the recommendation of the Superintendent and the Time Allowance Committee, the Commissioner granted plaintiff a total of five years, twenty days good time out of a total allowable good time of six years and eight months. The process by which the Commissioner reached this decision is described in an affidavit submitted in the case of People ex rel. Cholmondeley v. Casscles, New York Supreme Court, Washington County.

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* See affidavit of Gerald M. Burke with annexed documents reproduced as exhibit 7 in the appendix to this brief.

The affidavit was written by Gerald M. Burke who describes himself as "an employee of the Department of Correctional Services" who "often assist[s] the Commissioner in the automatic review of good behavior allowance decisions" and who is "familiar with the good behavior time allowance in the case of Sylvester Cholmondeley." The affidavit (which is reproduced as exhibit 7 in the appendix to this brief) reads in pertinent part as follows:

> "As a result of the Commissioner's review, the lost time recommendations and suggestions of a number of specific proceedings were not accepted or were scaled down and the Commissioner further modified the facility time allowance committee's recommendation in recognition of the inmate's behavior during the previous eighteen months.
>
> Specific facility recommendations regarding suggested lost time about which there was any suggestion or possible doubt as to the documentation or appropriateness of the facility recommendation were eliminated by the Commissioner's review from impact upon his final time allowance determination. Some of the specific recommendations which were thus deleted from consideration were:
>
> Recommendations from Auburn:
>
> | Date | Suggested Lost Time |
> |---|---|
> | 10/3/61 | 30 Days |
> | 10/12/61 | 10 Days |
> | 2/8/62 | 30 Days |
> | 5/19/62 | 30 Days |
>
> Recommendations from Clinton:
>
> | | |
> |---|---|
> | 10/25/62 | 30 Days |
> | 10/27/62 | 30 Days" |

These paragraphs from the Burke affidavit coupled with the sweeping nature of the restoration of good time show that the Commissioner's decision is in large part an admission of the inappropriateness of disciplinary action taken against plaintiff. Restoration of the good time taken away from plaintiff does not, however, make him whole for the injury inflicted upon him by the disciplinary action. For at the same time that good time was taken away from him, other punishments - punitive segregation, keeplock, loss of commissary privileges, deprivation of use of the library - were inflicted upon him as well. And if deprivation of good time was "inappropriate," the infliction of the other punishments was similarly inappropriate or worse. At the very least, the admission of the Commissioner implicit in the sweeping restoration of good time entitles plaintiff to go to trial with his claim that the other punishments were unconstitutional.

Then, of course, there is the issue of the one year, seven months, and twenty-five days of good time that was not restored. Outside of the partial list in the Burke affidavit, plaintiff has not been informed which deprivations of good time were restored and which were not. In preparing for trial, plaintiff would obviously have a right to such an itemization so he could specifically challenge the

disciplinary proceedings in which he lost good time and as a result of which he was incarcerated beyond July 17, 1973. A finding that the good time was wrongfully taken would not entitle him to a release from the legal custody to which he is still subject (and hence there is no exhaustion requirement) but it would entitle him to damages.

ARGUMENT

The Decision Below

In dismissing plaintiff's complaint, the district court states:

> "Plaintiff complains of being placed in a segregation unit; of being confined on various occasions in a "strip cell" containing only a toilet, sink, and a bed; of being keeplocked; and of being disciplined for prison-rule infractions by loss of good time and recreation privileges. In addition, he alleges generally that he has been subjected to 'a continuing course of harrassment [sic]' because he is a Black Muslim. These allegations are disputed by the defendants in the Spiegel affidavit dated October 2, 1973. Treating the allegations as true, however, it is nevertheless well settled that correctional authorities have wide discretion in matters of internal prison administration and that reasonable action within the scope of this discretion does not violate a prisoner's constitutional rights." 369 F.Supp. at 249.

This both misreads the complaint and misinterprets the law. It misreads the complaint because the allegations of the complaint are far broader and more serious than the district court describes. To take but one example, the complaint does not say merely that plaintiff was confined in a segregation unit; it says that plaintiff was confined in segregation for prolonged periods of time for improper reasons that rendered the confinement cruel and unusual punishment and an infringement of plaintiff's

First and Fifth Amendment rights.

The district court's decision also misinterprets the law. The district court acknowledges that the complaint alleges that plaintiff was subjected to a continuing course of harassment because he was a Black Muslim. The court holds that this allegation is answered by the principle that correctional authorities have wide discretion in matters of internal prison administration. But the Supreme Court has expressly held that, notwithstanding the claims of prison administration, the Constitution's guarantee of the free exercise of religion extends to prisoners. Cruz v. Beto, 405 U.S. 319 (1972); Cooper v. Pate, 378 U.S. 546 (1964). Courts have duly recognized the religious content of the Muslims' beliefs. Pierce v. LaVallee, 293 F.2d 233 (2d Cir. 1961); Sostre v. McGinnis, 334 F.2d 906 (2d Cir. 1964). And to the extent that the Muslims' beliefs may be regarded as political or secular, they are still entitled to protection: among the rights not taken from the plaintiff when he entered prison was the "freedom from discriminatory punishment inflicted solely because of his beliefs, whether religious or secular." Sostre v. McGinnis, 442 F.2d 178, 189 (2d Cir. 1971). Accord, U.S. ex rel. Larkins v. Oswald, 510 F.2d 583, 588 (2d Cir. 1975).

The district court misinterprets Corby v. Conboy, 457 F.2d 251 (2d Cir. 1972). The district court characterizes Corby as holding

> "that in view of [the] discretion accorded correctional authorities, claims of insufficient warm clothing, inadequate diet, poor lighting, lack of personal hygiene supplies and hot water, harassment and discipline for refusal to accept employment-claims similar to those raised [by plaintiff] - did not state a claim for which relief could be granted." 369 F. Supp. at 249.

Actually, however, in Corby, "[t]he heart of the [prisoner's] complaint" consisted of allegations that prison officials had "hindered plaintiff in his ability to prepare legal papers" and "placed him in segregated confinement under degrading conditions for his refusal to discontinue his legal activities." 457 F.2d at 253. The district court in Corby had held that these allegations did not state a claim upon which relief could be granted, but this Court reversed and remanded for an evidentiary hearing. At the same time, this Court upheld the dismissal of Corby's other claims and described these other claims, in a footnote (457 F.2d at 254 n. 21), in the words used by the district court here. Considering that this Court regarded Corby's claims of insufficient warm clothing, inadequate diet, lack of personal hygienic supplies, harassment, etc. as

peripheral to Corby's complaint, and considering further that the Court devoted a minimal amount of its decision to them, Corby hardly stands for the general proposition of law for which it was cited by the district court here. Corby does not hold that claims of insufficient warm clothing, harassment, etc. can never state a claim. It says merely that, under the particular facts of that case, which were not discussed in the Corby opinion, the claims were not sufficient to overcome the deference which federal courts should give the discretion of state prison authorities. Here, however, plaintiff's claims, which go far beyond Corby's claims, are more than sufficient to overcome that deference.

The Standard for Evaluating the Complaint

It is well established that "in considering whether . . . [a] complaint states a cause of action under section 1983 for violations of [a prisoner's] constitutional rights, the allegations must be accepted as true . . . and the complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Williams v. Vincent, 508 F.2d 541, 543 (2d Cir. 1974). Accord, Cooper v. Pate, 378 U.S.

546 (1964); Conley v. Gibson, 355 U.S. 41 (1957). When the complaint here is read in the light of this standard, it is plain that it is sufficient to entitle plaintiff to a trial. Indeed, as to a number of plaintiff's claims, the record as it now stands, shows that the defendants are liable to plaintiff as a matter of law, and a trial is necessary only to determine the question of damages.

POINT I

PLAINTIFF WAS UNCONSTITUTIONALLY SUBJECTED TO REPEATED PERIODS OF PUNITIVE SEGREGATION AND KEEPLOCK.

The most striking feature of plaintiff's prison record is the extraordinary amount of time he was confined in punitive segregation and keeplock. Plaintiff's periods of confinement in punitive segregation can be summarized as follows:

Institution	Dates of Continuous Segregation	Time Confined	Purported Justification for Segregation
Auburn	10/3/61-9/13/62	11 months 10 days	"Keep-locked at own request - acting in consort with other inmates in a movement against the discipline of the institution in protest of disciplinary action taken against Blyden. . . . To seg[regation] at own request" (Disciplinary Action Report, Appendix to Brief, Exhibit 1).
Clinton	10/25/62-2/10/65	2 years 3 months 26 days	"Creating a serious disturbance in the North Yard at 3:40 P.M. and for taking part in a mass protest against the administration of Clinton Prison" (Service Unit Record, Appendix to Brief, Exhibit 2).

Institution	Dates of Continuous Segregation	Time Confined	Purported Justification for Segregation
Attica	3/16/65-3/31/66	1 year 15 days	"Taking papers [from textile shop], insolent to Correction [Sergeant], insolent during hearing" (Cumulative Disciplinary Action Record, Joint Appendix).
Green Haven	1/31/67-2/11/67	12 days	"[Possession of] anti-racial - anti-religious papers also advocating overthrow of U.S. Government. Also was running school for Muslims" (Disciplinary Action Report, Appendix to Brief, Exhibit 4).
Clinton	2/11/67-12/6/67	9 months 25 days	"Inasmuch as [plaintiff] has preached black power and the violent overthrow of the United States Government and intends to continue doing so, it is necessary to confine him in an area where a general prison disturbance can be avoided" (Affidavit of Deputy Warden Perry J. DeLong, Appendix to Brief, Exhibit 5).

In addition to these periods of punitive segregation, there was also an extended period of keeplock:

Attica	5/6/69-1/28/70	8 months 22 days	"Refusing to take the Stanford Achievement Test" (Disciplinary Action Report, Appendix to Brief, Exhibit 6).

Adding all these periods of confinement together yields the grave fact that from October 3, 1961 through January 28, 1970,

a span of 8 years 3 months and 25 days, plaintiff was confined to punitive segregation and keeplock no less than 5 years, 10 months and 20 days.

The sheer length of the disciplinary confinement inflicted on plaintiff is alone sufficient to warrant the severest judicial scrutiny. But when the reasons for the confinement are considered, there can be no doubt that plaintiff was the victim of a monumental disregard for his constitutional rights and basic human dignity.

In Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), this Court found that extended commitment to punitive segregation was not in itself a violation of the Constitution's prohibition against cruel and unusual punishment provided that it was imposed by a warden in a genuine attempt to secure a prisoner's compliance with legitimate prison regulations. Plaintiff here, however, alleges, and the evidence confirms, that he was repeatedly confined to segregation for long periods of time in retaliation for his Muslim beliefs and activities, and in an effort to coerce him to cease being a Muslim. Under the holding of Sostre, this is precisely the kind of purpose that renders the segregation unconstitutional as a deprivation of plaintiff's freedom of thought and religion, as a violation of due process, and as cruel and unusual punishment. See 442 F.2d at 189.

Auburn chose to characterize plaintiff's asking the warden about the disciplinary action taken against Blyden and then choosing to stay in segregation with Blyden as "acting in a movement against the discipline of the institution." On the facts as plaintiff alleges them, however, plaintiff was guilty of nothing more than showing concern for a friend and coreligionist. At the very least, his conduct was protected by the First Amendment. The idea that plaintiff's decision to stay in segregation with Blyden on October 3, 1961 would explain, let alone justify, the institution in confining plaintiff in segregation for nearly a year is preposterous. The facts demand a different explanation, namely, that plaintiff was kept in segregation because he was a Black Muslim.

The incident leading to plaintiff's confinement in punitive segregation at Clinton bears a striking resemblance to the Blyden incident. Again, plaintiff participated in a peaceful questioning of severe punishment taken against fellow Muslims. Again he was accused of engaging in a mass protest against the institution. And again he was placed in punitive segregation for an unconscionably long period of time without review of his status. The very similarity between the Blyden and Clinton episodes is strong evidence that the true motivation behind the punitive confinement was not a legitimate desire to discipline but rather an illegitimate desire to isolate and suppress Muslims.

The charge leading to plaintiff's punitive confinement at Attica does not betray an explicitly anti-Muslim bias on its face. But the punishment was so far out of proportion to the seriousness of plaintiff's alleged violation of an alleged rule that it strongly suggests an improper motive. Moreover, wholly apart from the question of motive, the punishment was so disproportionate to the offense that it was unconstitutional as cruel and unusual punishment. Indeed, the prolonged segregation of plaintiff for taking papers from the textile shop is quite similar to the prolonged segregation of Robert Mosher for refusing to sign a workshop "safety sheet" which this Court found unconstitutional in Wright v. McMann, 460 F.2d 126 (2d Cir. 1972).

As for plaintiff's confinements at Green Haven and Clinton in 1967, the illegality appears plainly on the face of the charges. The full text of the charge for which Green Haven commited plaintiff to segregation was as follows:

> "Anti-racial-anti-religious papers also advocating overthrow of U. S. Government. Also running school for Muslims. The attached papers were found hidden underneath the above inmates locker. [Beginning of sentence unintelligible in plaintiff's copy of report]. . . had in his possession the attached paper which says he is an organizer and terrorist. He wants to start war and create bloodshead [sic] in the prison." (Appendix to Brief, Exhibit 4).

In short, Green Haven confined plaintiff in punitive segregation

for putting his thoughts on papers and having in his cell documents which prison officials regarded as inflammatory. This is just the kind of punishment which this Court found unconstitutional in Sostre v. McGinnis, 442 F.2d 178, 202-03 (2d Cir. 1971) and U. S. ex rel. Larkins v. Oswald, 510 F. 2d 583, 588 (2d Cir. 1975).

Although the disciplinary action report mentions that plaintiff was "also running school for Muslims," it is plain from the context that this is a peripheral matter. The gravamen of the charge is plaintiff's possession of inflammatory documents and the validity of the punishment must be evaluated on that basis. See U.S. ex rel. Larkins v. Oswald, 510 F. 2d at 588 (attempt to justify punishment inflicted for possession of inflammatory writings on grounds that inmate was also charged with advocating disruption of institution rejected because additional charge was not sustained and did not serve as the basis for punishment). But even if the claim that plaintiff was running a school for Muslims was used as a basis for putting him in segregation, the punishment would still be unconstitutional. Running a school for Muslims plainly comes within the protection afforded by this Court to the expression of beliefs. "Our holding that prisoners may not be punished for their beliefs carries the necessary corollary that

we may not permit punishment for the mere expression of those beliefs." Sostre v. McGinnis, 442 F.2d at 202. The report of disciplinary action contains no allegation that plaintiff's alleged school for Muslims threatened prison discipline,* and even if it did, the allegation could not be accepted until the prison officials proved, which they could not, that the school posed a "clear and present danger" of substantial interference with the orderly functioning of the institution.

Toward the beginning of the affidavit in which he explains why he had plaintiff summarily committed** to punitive segregation at Clinton, Deputy Warden DeLong alleges that plaintiff "flatly refused to cooperate with the Administration" of the prison. Further on in the affidavit, DeLong explains what he means by this: "Inasmuch as [plaintiff] has preached black power and the violent overthrow of the United States Government and intends to continue doing so, it is necessary

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* The statement in the report that plaintiff "wants to start war and create bloodshead [sic] in the prison" plainly refers to what the prison officer gleaned from the documents found in plaintiff's cell and not from what he heard plaintiff say to other inmates.

** As in Sostre, the fact that Clinton summarily committed plaintiff to segregation instead of following the standard practice of a charge and hearing is by itself substantiation that the institution's motives were improper. 442 F.2d at 189.

to confine him in an area where a general prison disturbance can be avoided." In other words, plaintiff was "uncooperative" insofar as he held and expressed political ideas which the prison Administration regarded as undesirable. Consequently, plaintiff's confinement in punitive segregation for being "uncooperative" was a plain violation of his First Amendment rights. See U. S. ex rel. Larkins v. Oswald, 510 F. 2d 583, 588 (2d Cir. 1975) where this Court stated that confining an inmate to segregation because of his "'uncooperative' attitude toward the institution. . . would [constitute a serious] violation of first and probably fifth amendment rights."

Clinton officials cannot now be heard to argue that plaintiff's ideas posed any danger to prison discipline, let alone a clear and present danger, because they did not wait to find out. They put plaintiff in segregation as soon as he arrived at the institution.

When plaintiff was transferred from Auburn to Attica on May 2, 1969, he firmly believed he was being transferred for advocating a black studies program. There is substantial evidence that this was indeed the case. But even if it were not, the very least that can be said is that plaintiff had good reason for believing that it was. Just two days before his transfer, on April 30, 1969, plaintiff had sent a letter to warden McMann vigorously advocating the establishment of a

black studies program.

Believing as he did that he had been transferred for advocating a black studies program at Auburn, plaintiff was understandably hostile to the educational program at Attica, which like the one at Auburn, did not include black studies. Plaintiff did not want to participate in the educational program at Attica until he had had the opportunity to challenge his transfer from Auburn in court. Consequently, explaining his reasons to the officials at Attica - the reasons are all reflected in the May 6, 1969 report of disciplinary action (Appendix to Brief, Exhibit 6) - plaintiff refused to take the Stanford Achievement Test. For this symbolic and conscientious expression of his views, plaintiff was keep-locked on a month-by-month basis for over 260 days. The institution's sole explanation for this punishment was that the Stanford Achievement Test was "a mandatory test." Plaintiff submits that there was no regulation making the test mandatory for someone of his level of education. But even if there was, the punishment was grossly disproportionate to the offense, especially considering the conscientious nature of plaintiff's refusal. Like Robert Mosher in his refusal to sign a workshop safety sheet, plaintiff was acting on principles which he held in good faith. Wright v. McMann, 460 F.2d 126, 133 (2d Cir.

1972). In sum, Attica's keeplocking plaintiff for 8 months and 22 days for refusing to take the Stanford Achievement Test was a plain imposition of cruel and unusual punishment.

POINT II

PLAINTIFF WAS SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT BY BEING CONFINED FOR SUBSTANTIAL PERIODS OF TIME UNDER DEBASING AND INHUMAN CONDITIONS.

The periods of plaintiff's confinement under degrading and dehumanizing conditions have been summarized in an earlier section of this brief. The conditions during those periods of confinement plainly constituted cruel and unusual punishment under the standards established by such cases as Wright v. McMann, 387 F.2d 519 (2d Cir. 1967), 460 F.2d 126 (2d Cir. 1972) and LaReau v. MacDougall, 473 F.2d 974 (2d Cir. 1972). It is particularly to be noted with respect to the conditions in the Section 4 segregation strip cells at Clinton Prison that these are precisely the same conditions found unconstitutional in Wright v. McMann, 321 F.Supp. 127 (N.D.N.Y. 1970) aff'd in part, rev'd in part, 460 F.2d 126 (2d Cir. 1972). Wright recovered damages for confinement in §4 for 33 days in 1965 and 21 days in 1966. Plaintiff was confined in §4 for 30 days in 1967, 51 days in 1965, and over 120 days in 1964, when, if anything, the conditions were worse than they were when Wright was confined there in 1965 and 1966.

POINT III

IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS, PLAINTIFF WAS REPEATEDLY SUBJECTED TO DISCRIMINATORY AND DISPROPORTIONATE PUNISHMENT BECAUSE HE WAS A BLACK MUSLIM, BECAUSE HE WAS BRANDED AS A TROUBLEMAKER, AND BECAUSE PRISON OFFICIALS ACTED IN SUCH A WAY AS TO REINFORCE A SPIRALING CYCLE OF OFFENSE AND PUNISHMENT.

During the years embraced by the complaint, there is no question that plaintiff was subject to a large number of disciplinary charges. But far from establishing that plaintiff deserved the punishments he received, plaintiff's extensive record proves that he was punished in violation of his constitutional rights.

Plaintiff's disciplinary record must be reviewed in the light of three factors. First, plaintiff was identified as a Black Muslim. The officials at the various institutions in which plaintiff was confined found the Muslim philosophy threatening, and went out of their way to find, or create pretexts for disciplining those who adhered to it. A minor infraction of prison rules that would be overlooked for another inmate would become the subject of a disciplinary report when a Muslim was involved. This is plainly substantiated in plaintiff's case by the large number of charges that were Muslim-related on their face -- for example, wearing a homemade

hat with a Muslim emblem on it, throwing food that contained pork down the toilet, preaching that God is a black man. It is also substantiated by the high percentage of petty charges and in particular by the large number of times plaintiff was disciplined for nothing more specific than "insolence." Throughout his entire prison record, there are only two charges that can genuinely be described as serious: that plaintiff hit officer Siskavick in February 1965 at Clinton, and that plaintiff assaulted officer Rafferty in January 1970 at Attica. And as to both these charges, plaintiff maintains that he acted only in self-defense.

Second, as a result of the charges that were brought against him because he was a Muslim, plaintiff was soon characterized as a troublemaker. Indicative of this is the following entry, made on December 26, 1967 in plaintiff's Service Unit records (reproduced as exhibit 8 in the appendix to this brief), records which, it must be emphasized, are transferred with the prisoner from institution to institution:

> "Over-all custodial adjustment since incarceration has been extremely poor as evidenced by an odious prison record of 39 disciplinary reports, the severity of which can be measured in terms of open defiance and disdain toward constituted authority. . . . During an investigation by institutional officials at Green Haven Prison, he has been described as a 'rabid racist,' a black power advocate in possession of inflammatory literature. The inmate's deplorable prison behaviour record speaks

> for itself. It would appear that he is either unable or unwilling to establish a satisfactory relationship with authoritarian figures presumably due to a misguided concept of his religious rights and belief by institutional officials. The inmate is listed in the record as a Muslim, his choice of religious denomination."

It is characterizations like this that explain why prison officials were so fast to bring disciplinary charges against plaintiff and why, when the charges were brought, they were so quick to impose unconscionably severe punishments. In violation of his right to due process, plaintiff was repeatedly punished on the basis of the way the correctional system had characterized him rather than on the basis of the specific charge at hand.

Third, instead of responding to plaintiff's problems in a constructive manner, prison officials did everything in their power to "reinforce a cycle of offense and punishment." Cf. Wright v. McMann, 460 F.2d 126, 132 (2d Cir. 1972). Recognizing plaintiff's anti-authoritarian responses, they went out of their way to confront and exacerbate them. Plaintiff's disciplinary record recounts repeated episodes where officials goaded plaintiff into positions for which they could punish him. In short, prison officials systematically provoked plaintiff in such a way that his long disciplinary record became inevitable.

One of the prime injuries which plaintiff sustained as a result of these three factors was denial of parole. Plaintiff was first eligible for parole on May 22, 1972*. He was denied parole each time he was considered for it largely on the grounds of his prison disciplinary record. Since that record was substantially invalid and misleading for the reasons discussed, the denial of plaintiff's parole was a violation of his constitutional rights.

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* This was the effective date of Chapter 343 of N.Y. Session Laws of 1972, Correction Law 212-a, which had the effect of reducing plaintiff's original minimum sentence of 15 years to eight years and four months.

POINT IV

THE COMPLAINT PROVIDES AMPLE BASIS FOR IMPOSING LIABILITY ON THE DEFENDANTS.

In dismissing the complaint, the district court relied in part on a finding that plaintiff had not stated a claim against the defendants under 42 U.S.C. § 1983 because he had not alleged sufficient involvement on their part in the denial of his constitutional rights. 369 F.Supp. at 249. This finding was plainly in error.

As demonstrated above, plaintiff's complaint is directed at formal disciplinary action taken against him by the institutions in which he was incarcerated. Responsibility for and knowledge of such action is chargeable both to the warden and the Commissioner of Correction. This is made explicit by N.Y. Correction Law § 114-a which read during most* of the relevant time period as follows:

> "The warden of each of said prisons shall cause to be kept a daily record of the proceedings of the prison, in which shall be entered a note of every infraction of the rules and regulations of the prison by any officer, which shall have come to his knowledge, and of every punishment inflicted on a prisoner, the nature and amount thereof and by whom it was inflicted, and also a memorandum of every well-founded complaint made by any prisoner of bad or insufficient food, want of clothing, or cruel or unjust treatment by a guard; such record shall be kept open at all times to the examination of the commissioner of correction."

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* Minor changes in wording were made when the section was amended in 1970. The substance remained the same.

The responsibility of the warden and the Commissioner of Correction is especially acute when the punishment inflicted on a prisoner entails punitive segregation, let alone the type of prolonged punitive segregation which was imposed on plaintiff. Wright v. McMann, 460 F.2d 126, 134-135 (2d Cir. 1972). It is most significant that the power to place a prisoner in solitary confinement is a power given to the warden (or superintendent, under current nomenclature) and only the warden. This was the case under old N.Y. Correction Law § 140 and is still the case under current N.Y. Correction Law § 137 which superseded § 140 in 1970.*

Moreover, even apart from these express statutory provisions, it violates common sense to believe that the defendants here did not actually know and were not actually involved with the repeated and severe discipline imposed on the plaintiff. Indeed, the proposed amended complaint, which the district court refused to allow plaintiff to file, speci-

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* It should also be noted that the Commissioner of Correction bears ultimate responsibility for deprivation of a prisoner's good time. 7 N.Y.C.R.R. § 260.4(b). Here the Commissioner restored a substantial amount of the good time taken from plaintiff in disciplinary proceedings, but there was one year, seven months, and five days of good time which he failed to restore. As a result, plaintiff was incarcerated for that much longer than he would otherwise have been and if, as plaintiff alleges, the deprivation of good time was unconstitutional, he would be entitled to damages for the extra time he was imprisoned.

fies numerous instances of defendants' actual involvement.* To take just one example, the proposed amended complaint alleges in paragraph 30 that the warden of Clinton Prison, J.E. La Vallee, interviewed plaintiff and other Muslim prisoners, before he had them placed in segregation for participating in the incident on October 25, 1962, which is described earlier in this brief. This allegation is confirmed by transcripts of the interviews which defendants produced during discovery. Defendants also produced a letter dated November 8, 1962 from La Vallee to the Commissioner of Correction, Paul D. McGinnis, showing that La Vallee sent McGinnis "tapes, stenographic notes, copy of Muslim rules, and reports of [officers]." In the face of these and other documents, defendants can hardly be heard to maintain that the action complained of by plaintiff was action of which they were not aware.

This case is entirely different then, from Johnson v. Glick, 481 F.2d 1028, 1034 (2d Cir. 1973), relied on by

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* It is significant that in denying plaintiff permission to file the amended complaint, the district court stated that "[t]he proposed amended complaint . . . simply sets forth in greater detail what is contained in the [present complaint]." 369 F.Supp. at 250.

the district court, which concerned "a simple spontaneous incident, unforeseen and unforeseeable by higher authority." In contrast to the prisoner in Johnson, plaintiff here complains of an extended, deliberate course of conduct of which "higher authority" was not only aware but for which "higher authority" was directly responsible, both constructively, by statute, and in fact.

CONCLUSION

The judgment below should be reversed. As to those incidents where the liability of defendants is established as a matter of law by the record as it now stands, the case should be remanded for trial on the issue of damages alone. As to the other incidents, the case should be remanded for trial on both liability and damages. In addition, plaintiff should be granted permission to amend his complaint as he deems appropriate.

Dated: New York, New York
July 18, 1975

Respectfully submitted,

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Elizabeth M. Fisher
David Rosenberg

Of Counsel

A P P E N D I X

EXHIBIT 1

AUBURN PRISON

DISCIPLINARY ACTION

October 3rd., 19 61

THE WARDEN:
THE SUPERINTENDENT:

I hereby report CHMONDELEY, Sylvester

No. 56095 Cell E-9-11 Shop Tailor Shop

for Keep-locked at own request - acting in consort with other inmates in a movement against the discipline of the institution i n protest of disciplinary action taken against BLyden, #54832.

(Signed) Thomas J. Nugent, C.O.

Case heard 10-18 19 61 on his plea of ~~guilty~~ guilty.

JUDGEMENT

30 DAYS & NO COMMISSARY C.P.O.

~~KEEP LOCK AT OWN REQUEST~~

Remarks: WAS GIVEN A CHOICE RETURNING TO ASSIGNMENT OR GOING TO SEGREGATION CHOOSE SEGREGATION 10-3-61

Principal Keeper Asst. Superintendent

This form must be filled out by the officer reporting the infraction and after judgement filed in the inmate's Central Record File.

SERVICE UNIT EXHIBIT 2 DEPT. OF CORRECTION

CHRONOLOGICAL ENTRY SHEET

Date Rec'd Rec. Cent Inst.

No 38084 Name CHOLMONDELEY, Sylvester

Min 4-29-70 Max 3-25-90 Offense Sent

Accomplices DCI

Date	
10-25-62	DISCIPLINARY: Resisting an officer and refusing to obey direct orders - 30 days - H.W. Folletto, Dept. Warden.
10-25-62	DISCIPLINARY: Creating a serious disturbance in the North Yard today at 3:40 P.M. and for taking part in a mass protest against the administration of Clinton Prison. 30 days - Placed in Segregated Company - H. W. Folletto, Deputy Warden.
10-27-62	DISCIPLINARY: Having contraband literature in his cell. 30 days H. W. Folletto, Deputy Wardon.
1-25-63	DISCIPLINARY: Refusing to come out of his cell to clean the platform of snow when #1 Company was going to the yard. No commissary - 60 days - H. W. Folletto, Deputy Warden.
2-28-63	DISCIPLINARY: Refusing to go to the yard. 30 days - H. Corcoran, Assistant Deputy Wardon.
5-9-63	DISCIPLINARY: Writing an insolent note to Wardon LaVallee demanding to know what was his (Wardon's) motive for confiscating personal property. 30 days - H. W. Folletto, Deputy Warden.
5-25-63	RESERVE COMP. INTERVIEW: Grant $1.65 for legal pamphlets only. (J. Beaubriand, Guidance Supervisor).
8-24-63	LAW LIBRARY: Granted permission touse the law library facilities.
9-26-63	DISCIPLINARY: Receiving legal papers prepared by Richey #37903 - 60 days no yard - Lt. Foley.
10-9-63	LAW LIBRARY: Dropped from the Law Library facilities.
2-10-64	RESERVE COMP. INTERVIEW: Granted $3.08 for (1) Every Day Law Made Easy. $1.98 (2) for Your Legal Advisor. $0.50 (3) Educational Law - $0.60.
3-18-64	LAW LIBRARY: Law Books were delivered to inmate in Seg. on 3-18-64 and again on 3-25-64.
3-22-64	DISCIPLINARY: Complaining about the food, every day this inmate finds something wrong with his ration, to the point where I think it is intentional - J. Fronyea, C.O. Disposition #4 Section - Indefinite - H. W. Folletto, Deputy Warden.
4-27-64	DISCIPLINARY: Demanding personal services. I was moving this inmate from five section to #28 cell on #2 Section. He wanted his legal books immediately, he said he wanted me to look into the matter personally. He was very arrogant at that time - J. Kennedy, C.O. Disposition: Return to #4 Sec. 30 days.
6-13-64	LAW LIBRARY: Law Books were delivered to inmate in Seg. on 6-13-64, 6-25-64, 7-13-64, 7-17-64, and 7-22-64.
7-3-64	DISCIPLINARY: Destroying State Property. This inmate broke a brand new toothbrush so that he could obtain another new one. When I gave him a new brush he accused me of giving him a second. He was very insolent and started mumbling under his breath - J. Fronyea, C.O. Disposition - Pay for toothbrush - no yard for 30 days - H. W. Folletto, Deputy Warden.

#33084 - CHOLMONDELEY, Sylvester

Page -2-

7-30-64 LAW LIBRARY: Law Books were delivered to inmate in Seg. this date

8-10-64 RESERVE COMP. INTERVIEW: Denied - Your request for Dictionary considered when you are out of Disciplinary Segregation - J. Beaubriand, Guidance Supervisor.

8-11-64 NOTE TO INMATE: Your request for $5.75 to purchase a dictionary will be considered when you are out of Disciplinary Segregation - /s/ J. Beaubriand, Guidance Supervisor.

8-12-64 LAW LIBRARY: Law books were delivered to inmate in Seg. on 8-12-64, 10-27-64, 11-4-64, 2-10-65 and 2-26-65.

8-15-64 DISCIPLINARY: Receiving Tobacco from inmate Davis #33630 - A. Bruso, C.O. Disposition - #4 Seg. 15 days - H. W. Folletto, Deputy Wardon.

8-16-64 DISCIPLINARY: Passing library book to Davis, who had lost his library privileges for six months - W. Dickerson, C.O. Disposition: #4 Seg. - 15 days - H. W. Folletto, Deputy Wardon.

10-11-64 DISCIPLINARY: Disobeying rules and destroying letter heads. This inmate was told not to destroy letter heads if he did not want to send out the letter, not to take the letter head. He still continues to do this - W. Akey, C.O. Disposition: Loss of commissary privileges 60 days - H. W. Folletto, Deputy Wardon.

11-30-64 DISCIPLINARY: Insolence when making rounds to collect books and spoons. Cholmondeley's utensils were in the door of his cell. I stopped and asked for them. He didn't even look up. I then had to yell at him - he just looked up with a sneer on his face. Then finally stood up, took his time in handing me one bowl, then in the same manner handed me his spoon - W. Siskavich, C.O. Disposition: #4 Section - 30 days - H. W. Folletto, Deputy Wardon.

12-22-64 DISCIPLINARY: Passing food on #4 Section and misusing State Blanket to pull food into his cell. - A. Bruno, C.O. Disposition: Strip cell - blanket and mattress 7:00 P.M. to 7:00 A. M. - H. W. Folletto, Deputy Wardon.

12-24-64 DISCIPLINARY: Preaching and raving at the top of his voice to other inmates on #4 Section, that the black man is right in believing that God is a Black Man, Moses was black and all his prophets were black, that there is only one black prophet left and that is Mohammad Allah and us Blackmen should stick together and pray to our Black God. - W. Siskavich, C.O. Disposition: #4 Seg. Indefinitely - H. W. Folletto, Deputy Wardon.

2-2-65 DISCIPLINARY: Inmate came out of his cell to get mattress and blankent. When he entered his cell I stepped over to close his door, he dropped his mattress and whirled around and took a swing at me. Hitting me below the left eye - he was subdued by himself and Officer Rivera and Sawyer - W. Siskavich C.O. Disposition: 90 days L.T. - H. W. Folletto, Deputy Wardon.

2-15-65 RESERVE COMP. INTERVIEW: Granted $6.08 for stamps - legal papers and pen points - J. Beaubriand, Guidance Supervisor.

2-20-65 TRANSFER: Inmate was today transferred to Attica State Prison.

EXHIBIT 3

REQUEST FOR INTERVIEW OR INFORMATION

FROM: S. Clarkmanbey No. 32[illegible] Date 5/1/63

Block Log Co 3 Cell 27 Shop .....

TO: Warden

SUBJECT: (State exactly what you want. Do not ask for an interview without stating your question.)

Dear Sir:

Please find this request to obtain important information pertaining to my personal property, of which it has been confiscated by one of your officers, on April 18, 1963.

However, the only thing I received was a receipt of my property on said confiscation, on April 22, 1963.

Now I want to know what is going to be done with my legal documents, (Kiowa, Swahili, Spanish, English, or the letters) and the letter? I would like to have my personal property back as soon as possible.

Thank you.

Respectfully,

P.S. When will I be receiving my package from ?

Continue on back

JUN 26 1963

EXHIBIT 4

CHP 1 20M1' 5 66.

STATE OF NEW YORK - DEPARTMENT OF CORRECTION

GREEN HAVEN PRISON

DISCIPLINARY ACTION

Jan 31 19 67

THE WARDEN:

THE SUPERINTENDENT:

I hereby report CHOL MONDELEY

No. 11623 Cell F-7-130 Shop 132

for ANTI-RACIAL-ANTI-RELIGIOUS PAPERS ALSO ADVOCATING OVERTHROW OF U.S. GOVERNMENT. ALSO RUNNING SCHOOL FOR MUSLIMS. THE ATTACHED PAPERS WERE FOUND HIDDEN BENEATH THE ABOVE INMATES LOCKER.

(Signed) R Kuss C.O.

Case heard 2/2/67 19 on his plea of guilty guilty.

JUDGMENT

segregation

Remarks:

B 2/2

Deputy Warden Ass't. Deputy Warden

This form must be filled out by the officer reporting infraction and after judgement filed in the Inmates Central File.

I did in his possession the attached paper which says he is an organizer and terrorists. He wants to start war and create bloodshed in the prison.

R Hess

EXHIBIT 5

STATE OF NEW YORK

DEPARTMENT OF CORRECTION

CLINTON PRISON

DANNEMORA, N. Y.

12929

DANIEL MCMANN
WARDEN

STATE OF NEW YORK
COUNTY OF CLINTON
VILLAGE OF DANNEMORA

Perry J. DeLong, being duly sworn, deposes and says:

I am the Deputy Warden of Clinton Prison and have been employed by the New York State Department of Correction for the past 25 years.

On February 11, 1967, Sylvester Cholomondeley, and three other inmates, were received by transfer from Green Haven Prison for Administrative Reasons. All inmates were interviewed upon their arrival regarding their past behavior and attitude on that date. This petitioner was very resentful, antagonistic and flatly refused to cooperate with the Administration and observe the rules and regulations of the institution (copy of which he had been furnished).

Subsequent interviews have revealed no change in his attitude. Inasmuch as he has preached black power and the violent overthrow of the United States Government and intends to continue doing so, it is necessary to confine him in an area where a general prison disturbance can be avoided.

The religous beliefs of the petitioner have not been challenged upon and were not a factor in his assignment to segregation.

Perry J. DeLong
Deputy Warden

Sworn and subscribed to before
me this 17 day of May, 1967

Wm. E. Donahue

WM. E. DONAHUE
Notary Public
Clinton Co. - State of N. Y.
Commission Expires March 30, 1969

EXHIBIT 6

120 4613M

STATE OF NEW YORK — DEPARTMENT OF CORRECTION

ATTICA PRISON

DISCIPLINARY ACTION

May 6, 1969

THE WARDEN

I hereby report Cholmondeley

No. 72133 Cell DE/13 Shop Reception

This inmate refused to co-operate by taking the Stanford Achievement Test. This is a mandatory test, and this man refused it stating that he did not want to take a test that was not geared toward the "Black woman." This man stated that

(Signed) [illegible] (over)

Case heard 5-20-69 19 on his

Plea of guilty

JUDGEMENT

Refuse to comply

K.h.U. F.O.

No Radio

No Commissary

Remarks:

[illegible]
Deputy Warden

This form must be filled out by officer reporting the infraction and after judgement filed in the Inmates Central Record file.

D.F.

this type of education was not of any value to him in that he was only interested in the study of the blackman in reference to his part in the administration of education, his part in History and in black studies in general. He also states that he would not participate in any programs until his action against this type of thing in court is resolved.

EXHIBIT 7

State of New York)
County of Albany) SS:

Gerald M. Burke, being duly sworn, deposes and says:

I am an employee of the Department of Correctional Services in Albany, New York. I often assist the Commissioner in the automatic review of good behavior allowance decisions. I am familiar with the good behavior time allowance in the case of Sylvester Cholmondeley, currently a resident at the Great Meadow Correctional Facility.

Inmates who are not granted parole but who nevertheless have performed well within correctional facilities can use good behavior time allowances to obtain release from a facility under supervision (7 NYCRR §260.1 [c]).

Facility staff, via disciplinary proceedings, may make recommendations regarding the loss of a specified period of good behavior allowance time - (this is referred to as time declared lost).

All dispositions involving loss of a specified period of good behavior allowance time are tentative until such time as it actually affects consideration for parole or for conditional or other release and then shall either be confirmed or modified by the Commissioner (§260.4 [b]).

Each correctional facility has a Time Allowance Committee whose role is to evaluate and recommend to the Commissioner the amount of good behavior time which should be granted to the individual up to a maximum of one-third of the time he is required to serve Part 260 and CL §803).

Time declared lost via the recommendations of facility disciplinary proceedings is excluded from the amount the Time Allowance Committee is authorized to recommend until the last consideration to occur before the earliest parole or conditional or other release date. At that time, the committee shall consider whether, and set forth its recommendation as to whether, the

inmates subsequent behavior merits restoration of all or part of the lost allowance (§261.3 [g]). The facility Time Allowance Committee forwards its recommendation to the Superintendent. If he confirms the recommendation, it is forwarded to the Commissioner for his final determination and a copy is given to the inmate involved. The committee is required to consider the entire file of the inmate, interview him and then decide upon a recommendation. This committee is specifically prohibited from making a recommendation in accordance with any automatic rule, but must appraise the entire institutional experience of the inmate and make its own determination.

Sylvester Cholmondeley's earliest Conditional Release date was July 17th, 1973. This tentative date is established on the assumption that the individual is granted the maximum allowable allowance. In this case, it involved a possible six years, eight months and zero days (6-8-0) or one-third of Mr. Cholmondeley's maximum sentence of twenty years (20-0-0).

Over the years, Mr. Cholmondeley has been involved in an unusually large number of disciplinary actions. On many occasions there were specific, if tentative, recommendations regarding suggested lost time. The total time declared lost via proceedings in his case was three years, two months and fifteen days (3-2-15).

Based on his earliest possible conditional release date, a facility Time Allowance Committee considered his case on May 17, 1973. The committee recommended that none of the time declared lost via disciplinary proceedings be restored. (Exhibit A, Item #8) Of the balance, they recommended that he be allowed two years, five months and eighteen days (2-5-18). (Exhibit A, Item #6 and 7)

It must be noted, with regard to this Good Behavior Allowance Report (Exhibit A) that the facility made a clerical error of fifteen days (0-0-15) in computing the time declared lost, line 5, which then resulted in an error in line 6, time available for recommendation of committee. The total recommended lost time should be three years, two months and fifteen days (3-2-15 instead of 3-2-0), thus changing line 6 (to 3-5-15 instead of 3-6-0).

The Superintendent confirmed the recommendation and forwarded the report to the Commissioner. (Exhibit A)

The recommendations of the Time Allowance Committee were carefully reviewed by the Commissioner. The specific lost time recommendations of individual proceedings were considered and evaluated both individually and collectively. Specific lost time recommendations are tentative until the final time allowance recommendation is confirmed by the Commissioner (§261.3[d], [e] and [g]).

As a result of the Commissioner's review, the lost time recommendations and suggestions of a number of specific proceedings were not accepted or were scaled down and the Commissioner further modified the facility time allowance committee's recommendation in recognition of the inmate's behavior during the previous eighteen months.

Specific facility recommendations regarding suggested lost time about which there was any suggestion or possible doubt as to the documentation or appropriateness of the facility recommendation were eliminated by the Commissioner's review from impact upon his final time allowance determination. Some of the specific recommendations which were thus deleted from consideration were:

Recommendations from Auburn:

Date	Suggested Lost Time
10/3/61	30 Days
10/12/61	10 Days
2/8/62	30 Days
5/19/62	30 Days

Recommendations from Clinton:

10/25/62	30 Days
10/27/62	30 Days

In the present petition there is reference (paragraph 28) to some "lost 90 days good time" for an incident in the yard at the Clinton Correctional Facility on October 24 or 25, 1962. There is no indication in the official time computation records for

Mr. Cholmondeley that there was any suggested lost time of 90 days for any incident in September, October of November of 1962 and no lost time was officially charged against him for any such incident.

Following the Commissioner's modification of the facility Time Allowance Committee's recommendation, Mr. Cholmondeley was granted by the Commissioner an additional two years, seven months and seven days (2-7-7) to be added to the two years, five months and eighteen days (2-5-18) suggested by the committee for a total good behavior allowance of five years, zero months and twenty-five days (5-0-25). The inmate was advised of this allowance in a memorandum dated July 5, 1973 by Deputy Commissioner Edward Elwin (Exhibit B). As previously noted, the absolute maximum good behavior allowance which could have been allowed Mr. Cholmondeley for the most meritorious performance within correctional facilities would have been six years, eight months and zero days (6-8-0).

Gerald M. Burke

Sworn to before me this
13th day of May, 1974.

Notary Public

JEROME L. WINTERS
NOTARY PUBLIC, State of New York
No. 4311350
Qualified in Albany County
Commission Expires March 30, 1975

ACTEC - Prescription Program (Evaluation)

(Facility)

GOOD BEHAVIOR ALLOWANCE REPORT

1973

1) Name of Inmate Sylvester Cholmondeley No. Rx-21

2) Present Consideration Date ____ ☒ Interim or Eligibility for Conditional Release

3) Prior Consideration Dates: ____ Total Interim Allowance 0-0-0

4) Max. time presently allowable (cumulative to date) 6-8-0

5) Time declared lost in Supt's Proceedings 3-2-0 (Should be 3-2-15)

6) Time available for recommendation of Committee 3-6-0 (Should be 3-5-15)

7) Allowance recommended 2-5-18 Reasons Return of 718 days Lost Comp. Time and 180 days for improved behavior over past 18 months. See Commissioner's Review Form

8) Restoration of lost time recommended 0 Reasons No grounds for restoration. See Commissioner's Review Form

[signature] Director, C.P.D.T.S. May 17, 1973

Signature of Chairman — Title — Date

9) Action by Superintendent ☒ Confirm recommendation ☐ Other determination

(specify) ____

10) Reasons or comments A review of this inmate's record indicates that while his capacity seems high, his attitude and efforts have been quite limited. However, his behavior during 1972 and to date in 1973 shows improvement and accordingly, I concur with the Good Behavior Allowance Committee's recommendation.

[signature] Superintendent May 18, 1973

Signature — Title — Date

To inmate: IMPORTANT See reverse side for your rights

-A-

This is a report of action taken with respect to good behavior allowance on your sentence. A copy of this report has been sent to the Commissioner of Correction and any final determination will be made by the Commissioner. You have a right to communicate with the Commissioner with respect to this determination as specified in Section 270.4 of the regulations printed below.

§270.4 Review of good behavior allowance decisions

1. An inmate may at any time initiate a review of a decision that has been made with respect to his good behavior allowance, even though such decision is subject to reconsideration in the ordinary course of events (i.e., loss of time declared in a disposition made in a superintendent's proceeding or a determination as to an interim allowance), or was made by the Commissioner.

2. Such review shall be initiated by filing a request for review with the Commissioner and stating in such request the facts that the inmate believes have not been given full or fair consideration.

3. Inmates shall be specifically advised of their right to have review of good behavior allowance decisions at the time they are notified of such decisions.

DEPARTMENT OF CORRECTIONAL SERVICES

REVIEW OF SENTENCE REDUCTION WITHHELD

TO: Mr. Sylvester Cholmondeley
#30999
Great Meadow Correctional Facility

I have been directed to advise you that the forfeiture of possible "good time" as a result of Disciplinary Proceedings has been reviewed by the Commissioner and his decision is indicated below:

☒ The determination made in the report of the ACTEC Time Allowance Committee, 5/ is ~~affirmed~~ modified.

☐ The Commissioner has restored _____ days. The Institution will recalculate your sentence accordingly.

☒ REMARKS:

The Commissioner has directed that, after careful review, you should be allowed credit at this time for five years and twenty-five days of good time (5-0-25) out of a maximum allowable time of six years and eight months (6-8-0).

New tentative conditional release date - 2/22/75

Date: 7/5/73

Edwin Elwin
Deputy Commissioner
Title

cc: Facility Superintendent
Central Files

FORM 2006 REV 2/73

CRIMINAL SERVICE UNIT EXHIBIT 8 OF CORRECTION

CHRONOLOGICAL ENTRY SHEET

Rec. Cent
Date Rec'd
Inst.

No. 38084 Name CHOLMONDELEY, Sylvester

Min Max Offense 1.Rape 1st 2.Burg 3rd 3.Robb 3rd Sent 1. 10-0/20-0 2. 5-0/10-0 3. 5-0/10-0 (2 & 3 concur but consec. with 1)

Accomplices Willie Edd Lloyd DCI (Total: 15-0/30-0)

Date	RECORD OF TRANSFER:
	7-7-60 Elmira Reception Center 9-20-60 Auburn Prison 9-13-62 Clinton Prison 2-20-65 Attica Prison 3-31-66 Green Haven Prison 2-11-67 Clinton Prison - Administrative Reasons
2-23-67	PHYSICAL CLASSIFICATION: Class II - Eyes, teeth, ears, extremities and skin.
2-21-67	NOTE: To inmate from Wm. Zielinski, Guidance Counselor. Re: Information requested. (See material in folder)
4-7-67	RESERVE COMP. REQUEST: J. Beaubriand, Corr. S.U. Supv. Granted $1.70 for legal pads and pens.
4-11-67	RESERVE COMP. REQUEST: J. Beaubriand, Corr. S.U. Supv. Granted $4.00 for stamps.
7-7-67	VISIT: David Caplan, Attorney.
7-12-67	VISIT: David Caplan, Attorney.
7-17-67	NOTE: Inmate's request for information regarding forfeiture of "good time" and eligibility date to meet Parole Board was referred to the Head Clerk's Office.
7-25-67	VISIT: John Clifford and Robert Ivey - Government Business.
9-21-67	VISIT: David Caplan, Attorney.
10-17-67	DISCIPLINARY: Inmate kicked the volley ball when told not to and said, "Man, lay down." Action: No yard 15 days. (This incident occurred in the Seg. yard)
10-17-67	DISCIPLINARY: Threatening an officer when told in the yard that he was keep locked. He doubled his hands into karate fists and made such remarks as: "Don't put your hands on me." "Go ahead and make your move and I'll kill you." "I'll break your jaw" Action: No yard 15 days. (This incident occurred in Seg. yard)
12-4-67	DISCIPLINARY: Failing to shave. Action: Reprimand.
12-5-67	VISIT: David Caplan, Attorney.
12-6-67	CELL CHANGE: Released from Seg Building and placed in Idle status.
12-26-67	PREVIOUS INSTITUTIONAL ADJUSTMENT & SECURITY COMMENTS: When here before the inmate worked for a short period of time in the Cotton Shop. Over-all custodial adjustment since incarceration has been extremely poor as evidenced by an odious prison record of 39 disciplinary reports, the severity of which can be measured in terms of open defiance and disdain toward constituted authority. An appraisal of available reports in the records would tend to characterize the inmate as being an antagonistically inclined individual who is rigidly resistant to authoritarian order in a correctional setting. During an investigation by institutional officials at Green Haven Prison, he has been described as a "rabid racist", a black power advocate in possession of inflammatory literature. The inmate's deplorable prison behavior record speaks for itself. It would appear that he is either unable or unwilling to establish a satisfactory relationship with authoritarian figures

CLINTON PRISON

STATE OF NEW YORK
SERVICE UNIT

DEPARTMENT OF CORRECTION

CHRONOLOGICAL ENTRY SHEET

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Rec. Cent

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Accomplices Willie Edd Lloyd DCI (Total: 15-0/30-0)

Date	
-continued-	presumably due to a misguided concept of infringement of his religious rights and belief by institutional officials. The inmate is listed in the record as a Muslim, his choice of religious denomination. The inmate has proven himself to be a troublesome individual and a source of consternation to the administration in this regard. Motivational force behind pattern of behavior appears to stem from his feelings of resentment and hostility. The inmate denies the use of narcotics. No warrants are pending.
12-26-67	INITIAL FOLLOW-UP INTERVIEW: Wm. Zielinski, Corr. S.U. Ass't. The inmate informs that he has had several opportunities at vocational training in previous institutions in Woodworking, Welding, and Tailoring. He did not appear too enthusiatic in discussing and formulating a work program. His interests are basically "academic", and he speaks of eventually taking a "Liberal Arts" course on the college level. His academic aspiration are rather high and seemingly unrealistic at this time. He needs to acquire a High School Equivalency Diploma. The inmate states that he has been able to advance his academic standing by self-study during incarceration. The inmate originally stated that he was only interested in an educational program but later expressed the desire to work on a half-day basis in the Tailor Shop, in order to earn money for Commissary articles. According to the inmate, he expects to be transferred to Auburn at some later date as "promised" by the Commissioner in answer to his parents' and lawyer's request that he be transferred to the educational facility at Auburn. He realizes that his transfer may take quite some time and in the interim he would like to go to school and work on a half-day basis. He describes his health as, "Okay," but presents general vague somatic complaints. He was advised of the sick call procedure. Lacking his upper front teeth, he states that he is on the dentist's list for further treatment. He is mentally alert and has no complaints to offer. The inmate is uninterested in the Group Counseling Program offered at this institution and attributes this to the fact that he is to be transferred to Auburn in the relatively near future. The inmate professes to be a member of the Islamic religion, having been converted to this religious sect in September 1961 while at Auburn Prison. The inmate advanced the information that this has been the basis of his difficulties while incarcerated. The inmate expressed the feeling that his belief in his religion has given him "tremendous insight" in past vices and has no more interest in doing what he used to do, which he now claims is contrary to the laws of nature, such as smoking, drinking, the use of profanity, also gambling and cheating. He hopes not to become involved in any difficulty regarding his religious belief, during his stay here. At interview situation, the inmate conducted himself in a pleasant manner and was verbally conplaisant. He was cooperative and responsive, showing an acceptable general attitude. The inmate's affability at interview would seem to belie his inner most feeling. It is uncertain whether or not the inmate was attempting to put up a good front with this counselor. He was given supervisory counseling in regard to taking stock of himself and cooperating with the institutional officials. Follow-up 12/68 - Routine individual counseling and over-all institutional evaluation. WZ:bjl

PRISON | SERVICE UNIT | OF CORRECTION

CHRONOLOGICAL ENTRY SHEET

Date Rec'd | Rec. Cent | Inst.

No. 38084 Name CHOLMONDELEY, Sylvester

Min | Max | Offense | Sent

Accomplices | DCI

Date	
1-11-68	PROGRAM COMMITTEE: Order I.Q. retest - Grade placement retest required. He is assigned to Cotton 1 to train for good work habits and observation of his effort to adjust as he verbalizes. If illiterate after testing - school. (Inmate verbalizes well - states he has self-educated himself - writes well, therefore, up to date evaluation.)
2-1-68	TRANSFERRED TO AUBURN PRISON.

COPY OF THE WITHIN PAPER

RECEIVED

DEPARTMENT OF [illegible]

JUL 21 1975

NEW YORK CITY OFFICE

ATTORNEY GENERAL